



Public Safety Wireless Network

Saving Lives and Property Through Improved Interoperability

April 21, 2003

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OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
12th St. Lobby, TW-A325
Washington, DC 20554

Re: PSWN Program Comments to the Commission's Notice of Proposed Rulemaking, *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168.

Dear Ms. Dortch:

On behalf of the Public Safety Wireless Network (PSWN) Program and pursuant to Section 1.51 of the Commission's Rules, 47 C.F.R. § 1.51 (2002), enclosed herewith for filing are an original and four (4) copies of the PSWN Program's Comments in the above-referenced proceeding.

Kindly date-stamp and return the additional, marked copy of this cover letter and filing to the person delivering it.

Should you require any additional information, please contact the undersigned.

Respectfully submitted,

Steven Proctor
Executive Director,
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

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Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast)	
Licensee Public Interest Obligations)	

To: The Commission

PUBLIC SAFETY WIRELESS NETWORK PROGRAM COMMENTS

Filed by: The Public Safety Wireless Network Program

Date: April 21, 2003

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Federal Communications Commission
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PUBLIC SAFETY WIRELESS NETWORK PROGRAM COMMENTS

1. The Public Safety Wireless Network (PSWN) Program' Executive Committee (EC) respectfully offers the following comments **for** the Commission in response to the Notice of Proposed Rulemaking' (NPRM) adopted by the Federal Communications Commission (Commission) pursuant to **MB** Docket No. **03-15** *et al.*, released **January** 27,2003.

¹ The PSWN Program is a federally funded initiative operating on behalf of all local, state, federal, and tribal public safety agencies. The Department of Justice and the Department of the Treasury are jointly leading the PSWN Program's efforts to plan and foster interoperability among public safety wireless networks. The PSWN Program is a 10-year initiative that is an effort to ensure that no man, woman, or child loses his or her life because public safety officials cannot talk to one another.

² See NPRM, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of **TV** Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; **[and]** Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. 00-168, rel. January 27,2003 (*DTV NPRM*).

I. BACKGROUND

2. In 1993, the Congress directed the Secretary of Commerce to identify at least 200 megahertz (MHz) of Federal Government primary spectrum below 5 gigahertz (GHz) for transfer to non-Federal Government entities.³ Subsequently, the Commission was directed to prepare a study of current and future spectrum requirements for local and state public safety agencies, and to develop a plan to provide sufficient spectrum in support of public safety communications services for the near-term future. On February 9, 1995, the Commission tendered those findings to the Congress, in the *Report and Plan, Meeting State and Local Government Public Safety Agency Spectrum Needs Through the Year 2010*. The report did not reach any conclusions or provide specific recommendations but did emphasize, however, that the Commission should investigate this issue further. At the request of the House Committee on Appropriations, the Commission, in cooperation with the National Telecommunications and Information Administration (NTIA), established the Public Safety Wireless Advisory Committee (PSWAC). The PSWAC, chartered under the Federal Advisory Committee Act,⁴ brought together members of the public safety community recognized for their expertise in public safety spectrum policy and management.

3. The PSWAC released its Final Report (PSWAC Report) to the Commission, which outlined a number of recommendations to meet the operational needs identified for public safety users through 2010.⁵ Primary among those recommendations was that the Commission should allocate an additional 97.5 MHz of spectrum in support of non-federal public safety

³ See Omnibus Budget and Reconciliation Act of 1993 (OBRA 93), Pub L 103-66, Title IV, August 10, 1993

⁴ 5 U.S.C. Appendix 2.

⁵ See PSWAC Final Report, September 11, 1995.

communications.⁶ Acting on those recommendations through the Balanced Budget Act of 1997 (BBA 97),⁷ the Congress stated its intent to follow the PSWAC's recommendations and demonstrated a commitment to better quality and reliability for public safety communications. The BBA 97 directed the Commission to allocate **24 MHz** for the purpose of supporting wireless local and state public safety communications needs. The Commission identified spectrum in the **700 MHz** band currently designated for analog broadcast television stations on channels 63, 64, 68, and 69 to be transitioned to public safety use by December **31,2006.**⁸ However, this deadline was not absolute and was contingent upon relocation of broadcast stations below channel **52** by that date.⁹ The actual date for the transfer of this spectrum from commercial to public safety use remains an open question because digital television (DTV) has not experienced the 85 percent market penetration required under BBA 97, which has allowed analog broadcasters to continue occupying 700 MHz band channels.¹⁰

4. To help increase the pace of the transition, the Commission released its Third Report and Order (Third R&O) to make arrangements for voluntary early bandclearing by incumbent broadcasters and to provide guidance for settling interference issues.¹¹ In November **2001**, the Commission announced that it would modify "a number of its DTV transition rules, including broadcast service area replication, maximization, and channel election rules, in order to enable

⁶ *Id.*, at p. 3.

⁷ Pub. L. 105-33.

⁸ *Id.*, at § 3003 (a) (1).

⁹ 47 U.S.C. 309 (j) 15 (A) (i).

¹⁰ *Id.*, at § 309 (j) (14) (B) (I-iii).

¹¹ See Third R&O, In the Matter of Service Rules for the 746–764 and 776–794 MHz Band, and Revision of Part 27 of the Commission's Rules, Carriage of the Transmissions of Digital Broadcast Television Stations, [and] Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-39, rel. January 23, 2001.

more broadcasters to get on the air with a digital signal and to help speed the DTV transition.”¹² In response to the requirements of **BBA 97**, the Commission conducted its first review of the DTV transition in November 2001.¹³ That proceeding considered several petitions for reconsideration that had been filed by various parties, deadlines for the election of core channels by broadcasters, clarification of rules and policies, and technical issues with respect to receiver standards and other matters. In June 2002, following a public hearing, and notice and comment by interested parties, the Commission began routinely denying requests from broadcasters for an extension for time to build DTV facilities that failed to comply with previously established construction deadlines.¹⁴ In October 2002, the Commission announced the formation of the DTV Task Force, “to make recommendations to the Commission concerning priorities to facilitate the transition and promote the rapid recovery of broadcast spectrum for other uses.”¹⁵

5. The current rulemaking represents the Commission’s second review of the policies that have been developed to facilitate the transition of analog television broadcasters to the channels that were set aside for digital service. Although local and state public safety agencies have been both patient with the DTV transition process and cautiously optimistic that voluntary migration would occur, there has been little progress in the intervening years since the **700 MHz** channels were designated for public safety communications. Congressional interest in implementing the

¹² News Release, **FCC Acts to Expedite DTV Transition and Clarify DTV Build-Out Rules**, November 8, 2001. The Commission simultaneously released a Memorandum Opinion and Order (MO&O) on Reconsideration, which reexamined its Rules and sought to ensure that its policies did not have “the unintended consequence of hindering, rather than furthering, the DTV transition.” *Id.* at p. 1.

¹³ See MO&O on Reconsideration, In the Matter of Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. **00-39**, rel. November **15, 2001**.

¹⁴ See, e.g., Denial of Applications for Extension of Time to Construct a Digital Television Station, DA **02-1359**, June **11, 2002**; DA **02-1437**, June **19, 2002**.

¹⁵ News Release, **FCC Chairman Michael Powell Announces Creation of FCC Digital Television Task Force**, October 11, 2001.

DTV transition to provide additional spectral resources for public safety use has been renewed; however, despite wide support, bills proposing to close existing loopholes in the deadlines have been referred to committee but have not yet been enacted.¹⁶ This spectrum remains inaccessible in the large metropolitan areas where access is most needed, and the shortage in public safety communications resources is critical.

11. STATEMENT OF INTEREST

6. The PSWN Program has been an active proponent of the Commission's efforts to provide additional spectrum for the support of local, state, and tribal public safety communications operations. The program has a long record of endorsing the Commission's policies and initiatives that could benefit both traditional public safety users, including law enforcement, fire and rescue, and other first responders, as well as agencies that support public safety by providing emergency medical services, highway safety, and critical infrastructure protection. The goal has been to ensure that the men and women who protect the Nation's citizens against manmade or natural dangers have adequate spectral resources to undertake that mission and have policies in place that would enhance the likelihood of their success.

III. DISCUSSION

7. The PSWN Program's comments to this rulemaking proceeding address issues related to the DTV **NPRM** in two phases. First, the program will discuss general implications of particular topics contained in the NPRM. Second, the PSWN Program will comment on specific points of concern to the local, state, and tribal public safety communities.

¹⁶ See H.R. 3397, Homeland Emergency Response Operations Act (*HERO Act*), December 4, 2001, which proposed to amend § 309(j) of the Communications Act of 1934 by adding paragraph D, which states in pertinent part "Extensions not permitted for channels (63, 64, 68, and 69) reassigned for public safety services." It was reintroduced by Rep. Jane Harman and Rep. Curt Weldon as H.R. 1425 on March 25, 2003.

A. Public Safety Requires Immediate Access to the 700 MHz Band Spectrum

8. The spectrum being released by the DTV transition represents a major step forward. The reallocated spectrum will help to boost general spectral efficiency and will offer technological benefits for both commercial and public safety users. As mentioned earlier, the PSWAC Report called for a total of 97.5 MHz of spectrum to be allocated for public safety communications by 2010 to meet the public safety community's growing needs. While the Commission and the Congress have taken steps to effectuate the fulfillment of this need, none of the 74 MHz of spectrum earmarked for public safety" use can be readily accessed. The 24 MHz of spectrum allocated in the 700 MHz band represents a groundbreaking band for public safety because it will contain 2.6 MHz dedicated to national interoperability with a common suite of standards, 2.4 MHz slated for state-administered use, and the balance as general use, reserve, and low power use spectrum. ¹⁷*

9. However, "The public safety community cannot realize any advantage from this allocated spectrum unless and until these channels have been cleared. It is essential that the Commission facilitate access to the 746–806 MHz band to permit public safety users to use this band as soon as possible."¹⁹ Disasters, whether manmade or natural, consistently demonstrate the crucial need for more reliable and more interoperable public safety communications. Events such as tornadoes in rural Tennessee, earthquakes in heavily populated areas of California and Washington, flooding in Texas and Louisiana, have brought national attention to the communications capabilities of agencies that would have benefited from access to additional

¹⁷ See MO&O, In the Matter of Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97-157, rel. October 9, 1997, at para. 10; Second R&O, In the Matter of the 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32, rel. February 27, 2002, at para. 2.

¹⁸ See Third R&O, In the Matter of the Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public safety Agency Communication Requirements Through the Year 2010 [and] Establishment of Rules and Requirements for Priority Access Service, WT Docket No. 96-86, October 10, 2000, at para. 7.

¹⁹ See Petition for Rule Making by the Public Safety Wireless Network to Promote Allocation of Spectrum for Public Safety Agencies and Other Matters to Address Communications Needs Through 2010, WTB 01-279, September 14, 2001 at para. 14.

interoperable spectrum. The benefit of improved access to public safety spectrum hinges on the speed at which the transition of the upper **700 MHz** band channels occurs.

B. The Commission Must Continue to Encourage the Transition

10. The Commission has acknowledged the importance of a timely transition. As Commissioner Copps stated, “[t]his Commission and its Chairman are committed to moving the transition forward.”²⁰ The market for DTV adds a complicated variable that is more difficult to influence, but the Commission took a bold step by mandating the inclusion of digital tuners in all televisions by 2007.²¹ Commissioner Abernathy noted, “[t]here also has been little support from the consumer electronics industry as a whole for a voluntary inclusion of DTV tuners in television sets. Thus, market forces alone are not providing consumers with access to digital signals and it is therefore appropriate and indeed necessary at this time for the Commission to step in.”²² The PSWN Program supports the Commission’s aggressive actions to help speed the transition along, but at the same time cautions against allowing other stakeholders to exploit any loopholes resulting from this NPRM that could allow for extensions that could further delay the release of this critical spectrum to public safety.

C. The Commission Must Avoid Blanket Extensions

11. As the Commission examines the language related to the DTV transition, there are many locations where the specific legislative intent may not be clear. One such example the Commission faces is whether it could postpone the date that stations must suspend analog service for qualifying stations that request an extension. Section 309(j)(14)(B) provides this capability; however, the Commission seeks comment on whether it can grant a market **or** national blanket

²⁰ Separate Statement of Commissioner Michael J. Copps Re: In the Matter of the Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television (*DTV Review*), MB Docket No. 00-39, rel. August 9, 2002, at p. 1.

²¹ Second R&O, Second MO&O, *DTV Review*, MM Docket No. 00-39, rel. August 9, 2002, at para. **40**.

²² Separate Statement of Commissioner Kathleen Q. Abernathy Re: *DTV Review*, MM Docket No. 00-39, rel. August 9, 2002, at p. 1.

extension to all encompassed stations if it finds that the qualifications for the return of analog spectrum have not been met.²³

12. The PSWN Program does not support blanket extensions that would be granted in the case that the criteria for the return of analog spectrum have not been fulfilled. These blanket extensions will generate an overly conservative approach to the adherence to the rules guiding the return of the analog broadcast spectrum and the determination of market penetration. It is the Commission's duty to ensure that, "[t]he FCC adopted rule will give *the fullest effect to the Congressional mandate to ensure that public safety licensees in the 700 MHz band operate free of interference.*"²⁴ By not decisively enforcing specific rules, the Commission would permit the transition to unnecessarily extend and hinder public safety access to spectrum set aside for that purpose by the Congress.

D. The Interpretation of Section 309(j)(14)(B)(iii)

13. The Commission requested comment on the possible interpretations of Section 309(j)(14)(B)(iii) regarding the granting of extensions based on the requisite number of households in a market." The PSWN Program generally supports the Commission's proposal to grant extensions in markets where 15 percent or more households are not capable of receiving digital signals either over the air or via Multichannel Video Program Distribution (MVPD). However, the PSWN Program emphasizes the importance of closing the loopholes that may allow the deadline to slip in certain markets. The PSWN Program reiterates that its concern lies only with Channels 63, 64, 68, and 69, which must be cleared so that public safety users have immediate spectral resources. An examination of the existing analog stations was performed by David

²³ DTV **NPRM**, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. **00-168**, rel. January 27, 2003, at para. 71.

²⁴ See Federal Communications Commission News, FCC Adopts Rules for Guard Band Manager Auction, March 9, 2000 at p. 1 (emphasis added).

²⁵ DTV **NPRM**, MB Docket No. 03-15, RM 9832, MM Docket No. 99-360, MM Docket No. 00-167, and MM Docket No. **00-168**, rel. January 27, 2003, at para. 74.

Eierman of Motorola, Inc. for the Association of Public-Safety Officials-International, Inc., which determined that 70 existing stations affected public safety access to spectrum. He further discovered that if **44** of those 70 stations were cleared, public safety would have access to 12 of the 24 **MHz** of spectrum nationwide. Mr. Eierman's study also noted that if examined on a county-by-county basis, **5** percent of the stations blocked public safety to spectrum that would cover **54** percent of the Nation's population.²⁶

14. Finally, the PSWN Program re-asserts that this much-needed allocation for public safety spectrum in the 700 MHz band is meaningless if the intended users cannot gain access. The NTIA noted at the outset of the allocation in 1997, "[o]ther Executive Branch agencies also supported this view that new spectrum is urgently needed to relieve the severe congestion currently being experienced by the public safety community and that *the most effective use of a portion of the television channels 60-69 is to make it available to public safety agencies.*"²⁷ Simply put, access to this additional spectrum will save lives and property.

IV. CONCLUSION

15. The PSWN Program gratefully acknowledges the contributions of the other parties that have responded to this docket to help the Commission craft proactive, forward-looking policies that will balance the interests of broadcasters with the acknowledged needs of the public safety community. It is imperative that the Commission act with all due dispatch to provide for access to additional spectrum and establish rules that will safeguard those operations. Public safety must remain a priority until the longstanding shortfall of spectral resources that are needed to

²⁶ Federal Communications Commission's Public Safety National Coordination Committee, Implementation Subcommittee meeting transcript, February 20, 2003, at pp. 52-53.

²⁷ Comments of the NTIA, In the Matter of Reallocation of the Television Channels **60-69**, the **746-806 MHz Band**, ET Docket No. 97-157, September 15, 1997, at p. **2** (emphasis added).

protect lives and assets at home and abroad **are** adequately addressed and the reliability and quality of those communications is guaranteed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Proctor", written in a cursive style.

Steven Proctor
Executive Director,
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

**Before the
Federal Communications Commission
Washington, DC 20554**

Certificate of Service

In the Matter of

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I, Richard N. Allen, Senior Associate, Booz Allen Hamilton, 8283 Greensboro Drive, McLean, Virginia, 22102-3838, hereby certify that on this date I caused to be served, by first-class mail, postage prepaid (~~or~~ by hand where noted) copies of the Public Safety Wireless Network Program's Comments, *In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; [and] Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 03-15, RM 9832, MM Docket ~~No.~~ 99-360, MM Docket ~~No.~~ 00-167, and MM Docket No. 00-168, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Fair Oaks, Virginia this 21st day of April 2003.



Richard N. Allen

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